

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

R. CATHY REARDON)	
On behalf of herself and all)	
similarly situated individuals,)	
)	
Plaintiffs,)	Civil Action No. 2:08-cv-1730MRK
v.)	
CLOSETMAID CORPORATION,)	Hon. Judge Mark R. Hornak
)	
Defendant.)	Class Action

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF PLAINTIFF’S
MOTION IN LIMINE REGARDING ADMITTED OR UNCONTESTED FACTS**

Class Representative Plaintiff, R. Cathy Reardon, by and through her undersigned counsel, on behalf of the Class, has moved the Court to find *in limine* that certain admitted and uncontested facts are determined and true for trial, and to so instruct the jury, and to bar Defendant from arguing to the contrary. She states the following as her Memorandum in Support:

ARGUMENT

The facts stated in Plaintiff’s Motion are objectively undisputed in the case and are taken entirely from Defendant’s Answer and judicial admissions, or are objectively determinable as judicial admission. Plaintiff has cited the respective statement, admission or evidence provided by ClosetMaid as to each stated fact. These uncontested facts will properly expedite and simplify the trial and permit a decision on the actual contested merits.

Defendant cannot credibly oppose these proffered facts as they were taken almost verbatim from its own Pre-Trial Statement, Answer or other docket pleading. As such,

these facts constitute judicial admissions that ClosetMaid cannot contradict at trial. *Greenwell v. Boatwright*, 184 F.3d 492, 498 (6th Cir. 1999) (“Judicial admissions of fact preclude the introduction of contradictory evidence as to the admitted facts. *See Ferguson v. Neighborhood Hous. Serv. of Cleveland, Inc.*, 780 F.2d 549, 550-51 (6th Cir.1986).”) “Judicial admissions are concessions in pleadings or briefs that bind the party who makes them.” *Keehn v. Lucas*, CIV.A. 09-16, 2012 WL 269632, n.3 (W.D. Pa. Jan. 30, 2012).¹

Accordingly, Plaintiff asks the Court to bar Defendant’s argument and evidence to dispute these admitted facts, and to instruct the jury as to same.

Respectfully submitted,

By: s/ James M. Pietz

James M. Pietz
Pa I.D. No. 55406
Pietz Law Office LLC
429 Forbes Ave., Suite 1710
Pittsburgh, PA 15219
412-288-4333
E-mail: jpietz@jpietzlaw.com

Leonard A. Bennett, Esq.
Consumer Litigation Associates
763 J. Clyde Morris Boulevard
Suite 1-A
Newport News, VA 23601
(757) 930-3660
E-mail: lenbennett@clalegal.com

¹ Citing *Parilla v. IAP Worldwide Serv., VI, Inc.*, 368 F.3d 269, 275 (3d Cir.2004) (finding that the plaintiff was bound because she “expressly conceded those facts in her complaint.”) (citing, inter alia, *Soo Line R.R. Co. v. St. Louis Southwestern Ry. Co.*, 125 F.3d 481, 483 (7th Cir.1997) (noting the “well-settled rule that a party is bound by what it states in its pleadings”); *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir.1972) (noting that unequivocal “judicial admissions are binding for the purpose of the case in which the admissions are made [,] including appeals”). *See also Karkoukli's, Inc. v. Dohany*, 409 F.3d 279, 283 (6th Cir.2005) (finding that the plaintiff’s “admissions of statutory compliance by defendants in its briefs” constituted “ ‘judicial admissions’ that estop [plaintiff] from raising a statutory non-compliance argument in this appeal.”)

Christopher North. Esq.
751-A Thimble Shoals Blvd.
Newport News, VA 23606
(757) 873-1010
E-mail: cnorthlaw@aol.com

*Counsel for the Representative And
Class Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of November, 2013, I caused a true and correct copy of Plaintiff's Memorandum in Support of Plaintiff's Motion in Limine Regarding Admitted or Uncontested Facts to be served by way of ECF Notification upon the following counsel of record for the Defendant:

W. Scott Hardy
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One PPG Place, Suite 1900
Pittsburgh, PA 15222
E-mail: scott.hardy@ogletreedeakins.com

Philip K. Kontul
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One PPG Place, Suite 1900
Pittsburgh, PA 15222
E-mail: Philip.kontul@ODNSS.com

s/ James M. Pietz

James M. Pietz
Pa I.D. No. 55406
Pietz Law Office LLC
429 Forbes Ave., Suite 1710
Pittsburgh, PA 15219
412-288-4333
E-mail: jpietz@jpietzlaw.com